2024 IL App (4th) 240842-U

NO. 4-24-0842

FILED
December 24, 2024
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
NAZSIER T. ROBINSON,	)	No. 21CF127
Defendant-Appellee.	)	
	)	Honorable
	)	Ryan M. Cadigan,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Lannerd and Vancil concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court dismissed the appeal because the State lacked the authority to appeal the trial court's judgment, which was, in substance, an acquittal of the charge of attempt (first degree murder).

¶ 2 In November 2023, a jury found defendant, Nazsier T. Robinson, guilty of multiple charges, including second degree murder (720 ILCS 5/9-2(a)(2) (West 2020)) and attempt (first degree murder) (*id.* § 8-4 (a), 9-1(a)(1)). In May 2024, the trial court, applying the Appellate Court, Third District, case *People v. Guy*, 2023 IL App (3d) 210423, 227 N.E.3d 106, *appeal allowed*, 223 N.E.3d 637 (2023), granted defendant's motion to vacate the attempt (first degree murder) conviction because it was inconsistent with the conviction of second degree murder.

¶ 3 On appeal, the State contends the trial court erred and asks this court to reject the reasoning of *Guy* and instead adopt the Appellate Court, First District's, approach in *People v. Guyton*, 2014 IL App (1st) 110450, 30 N.E.3d 1062, which held differently from *Guy*. Defendant argues the State lacks authority to appeal because the court's judgment was an acquittal of the attempt (first degree murder) charge. We agree. Accordingly, we dismiss the appeal.

¶ 4 I. BACKGROUND

¶ 5 In February 2021, the State filed multiple charges against defendant, including first degree murder (720 ILCS 5/9-1(a)(1) (West 2020)) and attempt (first degree murder) (*id.* § 8-4 (a), 9-1(a)(1)) in connection with the shooting of Malachi Williams and Kentavis Thomas. The State did not charge defendant with second degree murder. In November 2023, a jury trial was held.

¶ 6 Evidence at trial showed Thomas and Williams drove to defendant's home on February 18, 2021, with the intention of obtaining marijuana from defendant without paying for it. Thomas took a pellet gun with him, which he placed by his feet on the passenger side of the vehicle. When they arrived, defendant came outside carrying a firearm in his pocket and handed marijuana to Thomas. Thomas then instructed Williams to drive away without paying defendant for the marijuana. Defendant testified he saw Thomas reach for something and thought it might be a gun. However, he admitted he did not actually see a gun in the vehicle. Defendant also thought he saw the door to the vehicle opening. Video obtained from a camera on defendant's home did not show the door opening, and Thomas said he did not threaten defendant or open the door. Defendant testified he felt scared and threatened and shot at the vehicle as it was being driven away. Williams died from a gunshot wound to his head, and Thomas suffered serious injuries from the shooting.

¶ 7 Defendant's motion for a directed verdict was denied. The trial court instructed the jury on the elements of first degree murder. The court also instructed the jury it could find defendant guilty of second degree murder if, at the time of the killing, defendant believed circumstances existed which would justify the use of deadly force but his belief in such circumstances was unreasonable. The court further instructed the jury a person is justified in the use of force when he reasonably believes such conduct is necessary to defend himself against the imminent use of unlawful force.

¶ 8 The jury found defendant guilty of multiple charges, including both second degree murder and attempt (first degree murder). Defendant moved to set aside the jury verdict and vacate the attempt (first degree murder) conviction, arguing that, under *Guy*, the conviction of attempt (first degree murder) was inconsistent with the second degree murder conviction. In *Guy*, the Appellate Court, Third District, held attempt (first degree murder) requires the specific intent to kill without lawful justification and that intent is inconsistent with second degree murder when the defendant believed he was justified in the killing because of the need for self-defense, albeit unreasonably, and the defendant's intent did not change during the commission of the crime. *Guy*, 2023 IL App (3d) 210423, ¶¶ 77-80. In doing so, the *Guy* court disagreed with *Guyton*, which held convictions for both attempt (first degree murder) and second degree murder were not inconsistent. *Guyton*, 2014 IL App (1st) 110450, ¶ 46.

¶ 9 The trial court found *Guy* persuasive and stated:

> "[T]he facts of [defendant's] case, the shots fired at the victims, had the same mental state. I think we all agree on that. Whatever that mental state was happened in such a short amount of time and under the circumstances and the facts of this case that it was the same mental state."

The court also noted the jury found defendant believed he had the need for self-defense and the State never argued defendant's mental state changed during the commission of the crime. Accordingly, applying *Guy*, the court vacated the attempt (first degree murder) conviction. The State filed a motion to reconsider, which the court denied.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, the State contends the trial court erred in vacating defendant's attempt (first degree murder) conviction and asks this court to reject the reasoning of *Guy*. Defendant argues we lack jurisdiction because the court's judgment was effectively an acquittal of the attempt (first degree murder) charge and the State lacks authority to appeal an acquittal. The State has not responded to defendant's argument concerning jurisdiction.

¶ 13 The Illinois Constitution prevents the State from appealing judgments of acquittal after a trial on the merits. Ill. Const. 1970, art. VI, § 6. Meanwhile, Illinois Supreme Court Rule 604(a)(1) (eff. Apr. 15, 2024) allows the State to appeal an order or judgment the substantive effect of which results in dismissing a charge for any of the grounds enumerated in section 114-1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/114-1 (West 2022)): arresting judgment because of a defective indictment, information, or complaint; quashing an arrest or search warrant; suppressing evidence; from an order imposing conditions of pretrial release; from an order denying a petition to deny pretrial release; or from an order denying a petition to revoke pretrial release.

¶ 14 Section 114-1(a) provides, upon the written motion of the defendant made prior to trial before or after a plea has been entered, the trial court may dismiss the indictment, information, or complaint for various reasons. *Id.* § 114-1(a). There is no dispute that none of the

grounds for dismissal in section 114-1(a) are applicable here. However, the State is not limited to those orders specifically listed in section 114-1. *People v. Marty*, 241 Ill. App. 3d 266, 268, 608 N.E.2d 1326, 1328 (1993). Instead, "[t]he State has the right to appeal in any case of judgment the effect of which resulted in the dismissal of a charge." *Id.* However, when a "dismissal" is in substance an acquittal, we lack jurisdiction over the appeal. Ill. Const. 1970, art. VI, § 6. Thus, the question here is whether the trial court's action of vacating defendant's conviction of attempt (first degree murder) was an acquittal or if it was the dismissal of a charge.

¶ 15 An acquittal occurs when the ruling of the judge, regardless of its label, actually represents a resolution in the defendant's favor, correct or not, of some or all of the factual elements of the offense charged. *People v. Wallerstedt*, 77 Ill. App. 3d 677, 680, 396 N.E.2d 568, 570 (1979). For example, where an order, despite being labeled as a dismissal of a charge, is actually a dismissal based on a lack of sufficiency of the evidence to support the conviction, the order is one of acquittal. *Id.* at 680-81. Likewise, a judgment entered by the trial court notwithstanding a verdict, which is in effect a reconsideration of a motion for a directed verdict, is a nonappealable judgment of acquittal. *People v. Van Cleve*, 89 Ill. 2d 298, 307, 432 N.E.2d 837, 841 (1982). The Appellate Court, Second District, held that where a trial court vacated a conviction of attempt (voluntary manslaughter) and the record supported the trial court's finding the defendant lacked the required intent, the effect of the order was a judgment of acquittal that the State could not appeal. *People v. Perez*, 50 Ill. App. 3d 959, 961-62, 366 N.E.2d 1, 2 (1977).

¶ 16 In comparison, where a defendant's motion is in substance a motion in arrest of judgment, attacking the sufficiency of the charge in the information instead of the sufficiency of the evidence, the trial court's grant of the motion is a dismissal instead of an acquittal. *People v. Leezer*, 387 Ill. App. 3d 446, 448-49, 903 N.E.2d 726, 729 (2008). A dismissal after the grant of

a motion for a mistrial has also been considered a dismissal instead of an acquittal when the motion was granted not based on any insufficiency of the evidence. *Marty*, 241 Ill. App. 3d at 270.

¶ 17 Here, the trial court did not dismiss the charge of attempt (first degree murder) based on any of the grounds provided for by Rule 604 or section 114-1. Defendant's motion also was not an attack on the sufficiency of the information, which did not include allegations of second degree murder. Instead, the court's order vacated the attempt (first degree murder) conviction based in part on a determination of the sufficiency of the evidence. The order was substantively the same as a judgment notwithstanding the verdict because, under *Guy*, the State could not prove both second degree murder and attempt (first degree murder) without proving defendant's mental state changed during the course of the shooting. Absent such proof, the convictions were legally inconsistent. The court's comments when it vacated to the attempt (first degree murder) conviction further illustrated it made such a factual finding concerning defendant's mental state. Thus, regardless of whether we would adopt the reasoning in *Guy*, an issue we do not decide, the judgment was one of acquittal, and the State cannot appeal it.

¶ 18 We recognize the Appellate Court, Fifth District, has reached a different conclusion, holding that, where legally inconsistent verdicts were involved, the matter was not an issue of the sufficiency of the evidence, but instead one of "an incorrect conclusion of law." *People v. Carpenter*, 221 Ill. App. 3d 58, 64, 581 N.E.2d 683, 687 (1991). There, the court held, because the remedy for the legal error was to simply reinstate the conviction, there would be no need for a second trial and the defendant would not be subject to double jeopardy. *Id.* Thus, the court also found the judgment was a dismissal rather than an acquittal. *Id.* at 67.

¶ 19 However, *Carpenter* is directly at odds with our supreme court's decision in *Van Cleve*. There, the court held the Illinois Constitution's provision in article VI, section 6 provides protections beyond those assured by double jeopardy principles. *Van Cleve*, 89 Ill. 2d at 307. Thus, in holding a judgment notwithstanding the verdict was an acquittal, the court also specifically held article VI, section 6 was intended to apply to a judgment where there would not be a retrial, and therefore no involvement of the double jeopardy clause. *Id.* Further, it does not matter whether the trial court made an incorrect conclusion of law when it chose to apply *Guy* instead of *Guyton*. As previously noted, an acquittal occurs when the ruling of the judge actually represents a resolution in the defendant's favor, *correct or not*, of some or all of the factual elements of the offense charged. *Wallerstedt*, 77 Ill. App. 3d at 680.

¶ 20 Here, the trial court chose to apply *Guy* and then determined the State did not sufficiently prove attempt (first degree murder) under the reasoning of that case. Accordingly, we do not apply *Carpenter* and instead follow the lead of *Van Cleve* and *Perez* to hold the court's order here was, in substance, an acquittal.

¶ 21 Because the trial court acquitted defendant of attempt (first degree murder), the State cannot appeal. Accordingly, we dismiss the appeal for lack of jurisdiction.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, the appeal is dismissed.

¶ 24 Appeal dismissed.